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C O N F I D E N T I A L ROME 003060

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DOJ - OFFICE OF INTERNATIONAL AFFAIRS, CRIMINAL DIVISION
BRUSSELS FOR FAA PAUL FELDMAN
MONTREAL PLEASE PASS TO USMISSION ICAO
HOMELAND SECURITY FOR TSCC AND INTERNATIONAL AFFAIRS
STATE FOR L/EB; EB/TRA/DAS BYERLY; EUR/WE, EUR/ERA
FAA FOR API-1, AAI-1, AIA-1
NTSB FOR ROBERT MACINTOSH

E.O. 12958: DECL: 07/29/2014
TAGS: [EAIR](#) [PGOV](#) [IT](#) [ICAO](#) [AVIATION](#)
SUBJECT: JUDICIARY HAMPERS B767 ENGINE FIRE INVESTIGATIONS

Classified By: AMBASSADOR MEL SEMBLER FOR REASONS 1.5 (B) AND (D)

1.(U) This is an action request. Please see paragraph 22.

Summary

12. (C) Summary: Over the last year, Italian magistrates have impeded U.S. FAA and NTSB investigators in fully participating in accident investigations, as called for by ICAO Treaty Annex 13. Most recently, U.S. investigators have had difficulty obtaining access to two B767s involved in separate engine fire incidents July 16 and July 28 at Rome's Fiumicino Airport. While the Italian Air Safety Board (ANSV) is the designated entity responsible for investigating civil aviation accidents, Italian magistrates have ultimate responsibility and autonomy over most aircraft accident investigations. The Italian government has no authority over any magistrate. Often these magistrates, required under Italian law to investigate the possibility of criminal sabotage or negligence, restrict access to aircraft in the name of protecting evidence. In the case of the two B767s, FAA and NTSB investigators eventually were allowed to examine key parts of the planes only after we met with magistrates to explain Italy's obligations under ICAO. Under Secretary Gianni Letta, advisor to Prime Minister Berlusconi, has told the Ambassador he is sympathetic and has offered to help lobby the magistrates to move the investigation forward. While post is optimistic the problems surrounding the July incidents can be resolved, in the long term, high-level USG intervention may be necessary to encourage Italy to adopt investigation procedures more in line with the ICAO Treaty.
End Summary.

Introduction

13. (C) Under Annex 13, U.S. representatives can participate in the investigation of aircraft incidents involving, among other things, aircraft designed or manufactured in the U.S. In three recent investigations, Italian magistrates have impeded U.S. aviation accident investigators from the Federal Aviation Administration (FAA) and the National Transportation Safety Board (NTSB), as well as U.S. company technical advisors, from having access to an aircraft accident investigation.

First Event - Milan

14. (SBU) On June 1, 2003, a Learjet B45 suffered a bird strike at Milan Linate Airport. The jet engine stalled; and the plane hit the airport terminal and killed the pilot and all aboard.

15. (C) The Italian Air Safety Board (ANSV) asked its U.S. counterpart, the National Transportation Safety Board (NTSB), to assist with the investigation, under the provisions of Annex 13 of the ICAO Treaty. An FAA/NTSB team of investigators was immediately sent to Milan. However, Italian magistrate Grazia Pradella, conducting a criminal investigation of the event, refused to permit U.S. investigators to participate fully. As a result, there was a significant delay in completing the U.S. team's investigation; and some information was never provided.

Second Event, Rome: Blue Panorama B767 Engine Fire

16. (C) On July 16, 2004, a Boeing 767-3G5, registered in Ireland as EI-CXO and operated by (Italian) Blue Panorama Airlines as flight 1504, experienced a fire in the right engine (a Pratt & Whitney PW4062) during takeoff from Rome's Fiumicino Airport on a flight to Havana, Cuba. The pilots returned to the airport to make an emergency landing, stopped on the runway, and ordered an evacuation. Of the two pilots,

eight flight attendants and 277 passengers, there were 53 injuries.

¶7. (C) The ANSV asked the U.S. NTSB to assist with the investigation, under the provisions of ICAO's Annex 13. The FAA/NTSB team arrived on July 19; and investigators from Boeing, Pratt & Whitney, and Delta arrived on July 20.

¶8. (C) An Italian magistrate, Dr. Pantaleo Polifemi, had been conducting a criminal investigation into the accident. He refused to allow U.S. investigators to examine the aircraft for one week - allegedly until he had hired his own technical expert. It was not until July 26 that he finally allowed the FAA and NTSB investigators, along with advisors from Boeing, Pratt & Whitney and Delta, to examine the plane. However, when after only a few hours, investigators found a tube with a fuel leak, the police present at the scene refused to allow any further work. The tube was sealed into an evidence container, the engine was removed from the plane and covered, and the U.S. investigators were asked to leave. The ANSV investigators were similarly denied access to the aircraft. U.S. investigators were told that the magistrate might permit further examination of the engine in September (after the August vacation period). U.S. investigators were also not allowed to take the tube or any other samples for further analysis at the NTSB lab. U.S. investigators were also not allowed access to any pilot or witness statements, or to the pilots or witnesses themselves.

Third Event, Rome: East African Airways B767 Engine Fire

¶9. (C) On July 28, an East African Airways Corporation Boeing 767 experienced an engine fire after takeoff from Fiumicino. The flight returned to the airport, and made an emergency landing. Embassy FAA representative quickly contacted the ANSV to request U.S. participation in this investigation and asked to meet with the magistrate investigating the incident to request full participation by U.S. investigators.

Meeting with Magistrates

¶10. (C) On July 29, 2004, Embassy representatives met with Italian prosecutors/magistrates. Italian participants included: Consolato Labate (Chief Prosecutor for Civitavecchia), Pantaleo Polifemo (the magistrate in charge of investigating the July 16 incident), Maria Bianca Contronei (the magistrate in charge of the July 28 incident), and Vincenzo Pennetta (ANSV investigator in charge of the July 16 and July 28 incidents). Labate explained that any incident at Fiumicino Airport might result in criminal charges. Thus, one of his magistrates would head any investigation involving Fiumicino. He expressed understanding of the role of U.S. investigators, but stated that, under Italian law, the magistrate appoints a technical advisor to lead the investigation. Italian investigative entities, including ANSV, are thus under the control of the magistrate. The U.S. investigators were welcome to be present for all stages of the investigation, and to receive copies of documentation and data. However, they could do nothing without the consent of the magistrate's technical advisor.

¶11. (C) Embassy officials gave the magistrates a copy of Annex 13, and explained that the U.S. view of full participation was different than the observer status the magistrates were offering. We explained the crucial importance of a swift, complete investigation to determine the cause of each incident, to permit the NTSB to make recommendations regarding aircraft now flying. Particularly now, with two fires in 767 engines at Fiumicino in two weeks, it was urgent to complete both investigations promptly and completely.

¶12. (C) The magistrates responded that they also needed to preserve evidence. Thus, while repeatable tests and examinations could move forward, non-repeatable tests and examinations requiring changes to the engine could not be permitted. The magistrates offered full cooperation and suggested that, if problems recurred, U.S. investigators contact the lead magistrate directly.

Improved Cooperation, But Questions Remain

¶13. (C) The FAA and NTSB experienced a clear improvement in cooperation after the Embassy meeting with the magistrates. On July 30, an FAA/NTSB team was allowed to examine the tube suspected of causing the July 16 Blue Panorama engine fire. The July 16 engine itself, however, remained off-limits to U.S. investigators. Also on July 30, the FAA/NTSB team was given complete access to the East African Airways B767 (including the relevant engine) involved in the July 28 incident. Preliminary inspections revealed what appeared to be a broken oil line at the base of the engine, and the oil

line did not appear to fit correctly. The U.S. team also was able to examine data from the plane's flight data recorder, which indicated excessive engine vibration at takeoff and incorrect oil pressure. The recorder also indicated excessive engine vibration during the period before takeoff when mechanics were servicing the engine.

¶14. (C) FAA and NTSB representatives have urged that the fuel tube from the July 16 Blue Panorama incident be examined in a U.S. laboratory to determine the cause of the perforation. The magistrate's technical expert, however, has insisted that the analysis be conducted by an Italian lab. (Note: While different magistrates are in charge of the investigations of the July 16 and July 28 incidents, the same technical expert has been hired to assist with both. End note.) In a follow-up conversation August 3 with Magistrate Polifemo, Embassy DOJ Attache conveyed our offer to have the fuel line sent to the United States for analysis, and also requested that the magistrates allow the engines involved in both incidents to be sent to a Pratt & Whitney facility in the United States for complete break-down inspections (a standard practice following incidents of engine failure). Polifemo responded that the magistracy had found an Italian lab, operated by aeronautical firm Agusta, that is scheduled to analyze the fuel line, though not for another two weeks, or so. Polifemo also confirmed that the engine involved in the July 28 incident would need to be dismantled and inspected, but there was no decision on dismantling the engine from the July 16 incident yet.

¶15. (C) Note: Though the investigation is only in the preliminary stages, there is so far no evidence that these two engine fires were related. There are preliminary indications that the July 16 incident was caused by a perforated fuel line, and that the July 28 fire resulted from an oil leak caused by a malfunctioning bearing. The maintenance work conducted on the two B767s just prior to the fires was done by separate companies. End note.

Key Berlusconi Advisor Offers Assistance

¶16. (C) The Ambassador met August 6 with Gianni Letta, Under Secretary to the Prime Minister, who was familiar with the

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situation. Letta offered that if the NTSB team could return as soon as possible, he could commit to having the NTSB and U.S. firm representatives observe and photograph a break-down of the engines that would take place in Italy. In Letta's view, this approach would respect the magistrates' interest in preserving possible evidence, while ensuring the U.S. side obtained the necessary information to determine the exact cause of the fires. (Note: As a government official, Letta theoretically should not have any influence over how the

magistrates handle the question of the engine disassembly. In practice, however, Letta appears to have some ability to lobby the magistrates overseeing the B767 fires. End note.)

¶17. (C) As of this writing, Post FAA representative was conferring with the NTSB on Letta's proposal. The NTSB and FAA will continue discussions with their Italian counterparts on exactly where and how the engines will be disassembled and the role U.S. investigators can play.

Background: Judiciary's Role in Civil Air Investigations

¶18. (SBU) By law, Italy's magistracy is completely independent from the Italian government. The judiciary is largely self-governing, with oversight by the Supreme Council of the Magistracy (CSM), two-thirds of whose members are elected by the magistrates themselves, with one-third appointed by Parliament. The President of the Republic (Carlo Azeglio Ciampi) is the honorary Chair of the CSM. Mission representatives have, in some cases, excellent relationships with individual magistrates. Other judges are unwilling to engage.

¶19. (U) Under Italian law, magistrates are required to investigate any aircraft accident/incident where there is a possibility of a crime, including criminal negligence. The standard for criminal negligence in Italy is much lower than in the United States; so, in practice, magistrates oversee many civil aviation investigations. This peculiarity of Italian law, however, appears to be in conflict with the ICAO, which states that a country's NTSB-equivalent should have authority over accident investigations.

Comment and Action Request

¶20. (C) Embassy Rome believes it essential that aircraft accident and incident investigations be conducted in accord with ICAO Annex 13, including full participation by U.S.

authorities. We are very concerned that Italian magistrates' right to lead and control aircraft accident and incident investigations will result in further difficulties of the kind surrounding the B767 engine fires. Moreover, we are concerned that the magistrates' technical advisors and ANSV may move extremely slowly and -- more importantly -- be unable to carry out technically competent investigations that result in valid determination of the cause of such incidents.

121. (C) We intend to work closely with the Civitavecchia magistrates to gain the fullest possible access and press for complete, in-depth investigations to determine the real causes of the July 16 and July 28 incidents. We are encouraged by the cooperation that the magistrates eventually provided to us, but concerned that such cooperation was obtained only after pressing the magistrates, and that we lost valuable time.

122. (C) Action Requested: Embassy believes a systemic approach to the overall long-term problem of working with Italian magistrates on aircraft accident/incident investigations is needed. We request that a diplomatic note be drafted for the Italian MFA pointing out Italian government responsibilities under ICAO Annex 13 and asking for assurances that future aircraft accident and incident investigations will include full and prompt access by USG authorities and company representatives of the aircraft and engines involved, and full participation in any investigation. End action requested.

ICAO Annex 13

123. (U) Annex 13 (Aircraft Accident and Incident Investigation) to the Convention on International Civil

Aviation has been signed and ratified by both the U.S. and Italy.

Key provisions of Annex 13:

5.4 The accident investigation authority shall have independence in the conduct of the investigation and have unrestricted authority over its conduct, consistent with the provisions of this Annex.

5.4.1. Recommendation - Any judicial or administrative proceeding to apportion blame or liability should be separate from any investigation conducted under the provisions of this Annex.

5.5 The State conducting the investigation shall designate the investigator-in-charge of the investigation and shall initiate the investigation immediately.

5.6 The investigator-in-charge shall have unhampered access to the wreckage and all relevant material, including flight recorders and ATS records, and shall have unrestricted control over it to ensure that a detailed examination can be made without delay by authorized personnel participating in the investigation.

5.10 The State conducting the investigation shall recognize the need for coordination between the investigator in charge and judicial authorities. Particular attention shall be given to evidence which requires prompt recording and analysis for the investigation to be successful, such as the examination and identification of victims and read-outs of flight recorder recordings.

--Note. 2. Possible conflicts between investigating and judicial authorities regarding custody of flight recorders and their recordings may be resolved by an official of the judicial authority carrying the recordings to the place of reading and thus maintaining custody.

5.18 The State of Registry, the State of the Operator, the State of Design and the State of Manufacture shall each be entitled to appoint an accredited representative to participate in the investigation.

5.20 The State of Design and the State of Manufacture shall be entitled to appoint one or more advisors, proposed by the organizations responsible for the type design and the final assembly of the aircraft, to assist their accredited representatives.

5.24 A State entitled to appoint an accredited representative shall also be entitled to appoint one or more advisors to assist the accredited representative in the investigation.

5.24.1 Advisors assisting accredited representatives shall be permitted, under the accredited representative's supervision, to participate in the investigation to the extent necessary to enable the accredited representatives to make their

participation effective.

5.25 Participation in the investigation shall confer entitlement to participate in all aspects of the investigation, under the control of the investigator-in-charge, in particular to: (a) visit the scene of the accident; (b) examine the wreckage; (c) obtain witness information and suggest areas of questioning; (d) have full access to all relevant evidence as soon as possible; (e) receive copies of all pertinent documents; (f) participate in read-outs of recorded media; (g) participate in off-scene investigative activities such as component examinations, technical briefings, tests and simulations; (h) participate in investigation progress meetings including deliberations related to analysis, findings, causes and safety recommendations; and (i) make submissions in respect

of the various elements of the investigation.

End text of key provisions of Annex 13.

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NOTE: NOT PASSED TO ABOVE ADDRESSEE(S)

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2004ROME03060 - Classification: CONFIDENTIAL